SUMMARY

With the exception of Qwest, the petitions for reconsideration or clarification should be denied. TelePacific's request that, to derive the benchmark rate in markets served by more than one ILEC, the ILEC rates be averaged in some fashion should be denied. As TelePacific admits, each of the possible averaging methodologies its proposes is problematic. If a CLEC is unable to bill differentiated access charges, then the CLEC should bill all of its customers in the market at the lowest ILEC rates. If the money foregone by this approach is sufficiently large, the CLEC will have the right incentive to modify its billing system so it can bill at the rates of each separate ILEC.

The challenges to the Commission's determination that CLECs entering new markets after the effective date of the Order should charge ILEC-level rates immediately are largely without merit. The rule the Commission adopted was a "logical outgrowth" of the NPRM, and cannot be challenged for lack of adequate notice. The arguments that the CLECs have made substantial investments in markets that they have not yet entered and that these investments were predicated on the prior regulatory regime reflect a misunderstanding of that regime. The Commission gave clear warning in 1997 that it would view with concern any attempts to charge over-ILEC rates for access and stood ready to take corrective measures if called upon to do so, and initiated further proceedings in 1999 because of its concern. Thus, these CLECs had no assurance that they could retain above-ILEC access charges and could not reasonably have relied upon such charges in making investments for new market entry. Their other argument – that the new market rule places them at a disadvantage *vis-à-vis* CLECs that are already in the market and are permitted to charge a higher benchmark rate – is not without merit, but overlooks the fact

that the newly entering CLEC is still permitted to charge as much for access as its dominant competitor in the market – the ILEC. Given the Commission's other findings in the Order, the only logical way to equalize the benchmark rate for all CLECs would be to impose an immediate ILEC-level benchmark in all markets.

The Commission should not expand the scope of its rural CLEC benchmark or increase the level of the benchmark rate by including the carrier common line charge. The arguments in favor of such changes ignore the essential Commission rationale for having a rural exception to the otherwise applicable benchmarks and would simply encourage inefficient entry. For similar reasons, the Commission should also deny the request of TDS MetroCom for additional benchmarks for CLECs serving small and medium-sized urban areas, and should deny its request to force IXCs into mandatory dispute resolution processes if they do not want to pay above-benchmark rates.

With respect to two other issues of which clarification is sought, the Commission should avoid ruling at this time on whether a CLEC might be liable for discrimination if it has contracts with individual IXCs at less than its tariffed rates. Whether a discrimination in charges is unjust is necessarily an issue for case-by-case determination, and nothing in the Order purports to address the discrimination issue. Finally, the Commission's Order is clear that a CLEC may impose a PICC regardless of whether the competing ILEC does so, but the revenues from the CLEC's PICC must be included in determining whether its overall charges are within the allowable benchmark level.